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COLUMBIA, SOUTH CAROLINA

November 3, 2010

VIA ELECTRONIC FILING

Jocelyn Boyd, Chief Clerk / Administrator
Public Service Commission of South Carolina
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Columbia, South Carolina 29211

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**Re: Birch Communications and American Fiber Network Application for
Approval to Transfer Assets
Docket Nos. 2010-325-C, 1999-323-C, 2000-265-C & 2001-21-C**

Dear Jocelyn:

Enclosed for filing please find a proposed order approving the transfer of assets and customers in the above docket. The Office of Regulatory Staff has reviewed the proposed order and does not object to its entry. The Companies requested expedited review of the joint application by November 15, 2010, so they can provide a joint notice of transfer to American Fiber Network customers at least thirty days prior to the transfer. The verified testimony of Christopher Bunce in support of the application was filed with the Commission on September 20th. By copy of this letter, we are serving the same on the Office of Regulatory Staff. If you have any questions, please have someone on your staff contact me.

Very truly yours,

ROBINSON, MCFADDEN & MOORE, P.C.

Bonnie D. Shealy

/bds
Enclosures

cc/enc: Shealy Reibold, ORS Staff Attorney (via U.S. Mail & email)
Angela F. Collins, Esquire (via email)
Mr. Rob Heath, American Fiber Network (via email)

**BEFORE
THE
PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA**

DOCKET NOS. 2010-325-C, 1999-323-C, 2000-265-C AND 2001-21-C

ORDER NO. 2010-____

NOVEMBER __, 2010

In re:)	
)	
Joint Application of Birch Communications,)	ORDER APPROVING
Inc.; Birch Telecom of the South, Inc., dba)	TRANSFER OF ASSETS
Birch Communications; and American)	AND CUSTOMERS
Fiber Network, Inc. for Approval to)	
Transfer Assets)	

This matter comes before the Public Service Commission of South Carolina ("Commission") on the verified application of Birch Communications, Inc. ("Birch Communications"); Birch Telecom of the South, Inc., dba Birch Communications ("Birch Telecom") (collectively the "Company"); and American Fiber Network, Inc. ("AFN") (Birch Communications, Birch Telecom and AFN collectively, the "Joint Applicants") to transfer AFN's telecommunications assets and South Carolina customer base to the Company pursuant to S.C. Code Ann. §§ 58-9-280, 58-9-300 and 58-9-310. The Joint Applicants requested that the Commission approve this Application by November 15, 2010, so that they can expeditiously close the transaction and provide a joint notice of transfer to AFN customers at least thirty days prior to the transfer. Birch Communications and Birch Telecom also filed the verified testimony of Christopher Bunce in support of its application. Mr. Bunce requested that the Commission grant a waiver of any applicable anti-slamming regulations to the extent necessary. The

Commission is of the opinion, and so finds, that the Application should be granted on the basis of the following findings and conclusions:

FINDINGS OF FACT

1. AFN is authorized by the Commission to provide local exchange and interexchange services by Order No. 2001-367 dated April 24, 2001, in Docket No. 2001-21-C.

2. Birch Communications, formerly known as Access Integrated Networks, Inc., was granted authority to provide local and long distance telecommunications services in South Carolina by Order No. 1999-801 issued November 15, 1999, in Docket No. 1999-323-C. On December 18, 2008, the Commission issued Order No. 2008-824 approving Access Integrated Networks, Inc.'s, doing business as Birch Communications, request to change the name to "Birch Communications, Inc." Birch Telecom is authorized by the Commission to provide local exchange and interexchange telecommunications services in South Carolina by Order No. 2000-792 issued September 25, 2000 in Docket No. 2000-0265-C. Birch Telecom is a wholly owned subsidiary of Birch Communications.

3. The Company published notice of this matter in *The Greenville News*, *The State*, and *The Post and Courier* newspapers in conformity with the Commission's requirements providing notice and opportunity to any interested third parties to intervene in this matter.

4. Birch Communications has entered into an agreement to purchase AFN's assets and customer base.

5. The assets to be purchased include customer accounts, accounts receivable, customer agreements and contracts, vendor agreements and contracts, and intellectual property. The proposed transfer will result in Birch Telecom becoming the service provider for AFN's

current South Carolina customers unless the customer selects another carrier. The rates, terms and conditions of the services received by these customers will not change. Following approval, Birch Telecom states that it will file any necessary tariff revisions to incorporate AFN's current services and rates into its existing tariffs on file with the Commission.

6. Since the Company will hold AFN's assets and assume AFN's telecommunications operations in South Carolina, AFN will surrender its authorization and cancel its tariffs once AFN determines that it no longer needs its certificate of public convenience and necessity for operational or billing purposes. However, before AFN requests to cancel its certificate and tariffs, it must satisfy any remaining regulatory obligations for its South Carolina operations. These obligations include, but are not limited to, the Company's 2010 gross receipts obligations and any assessments for the SC USF for the 2010 to 2011 fund year.

7. The Company requested a waiver of any applicable anti-slamming regulations in Mr. Bunce's testimony. The Joint Applicants proposed to provide a joint notice of the transfer to AFN customers at least thirty days prior to the transfer and submitted a sample of the customer notification in the verified Joint Application. The Commission finds that the Joint Applicants' proposed plan to provide customer notice complies with the requirements of South Carolina law.

8. The Commission finds that it is in the public interest of the citizens of South Carolina to approve the transaction between the Company and AFN as both Birch Communications and Birch Telecom are established telecommunications service providers in South Carolina with significant industry knowledge, technical expertise, and financial strength. Birch Telecom will continue to offer the same high quality services to AFN's customers in terms of the services that those customers receive.

CONCLUSIONS OF LAW

1. Based on our finding that no parties intervened in this matter and since this transaction will be seamless for AFN customers, we conclude that it is proper to waive the requirement for a formal hearing in this matter.

2. We conclude that it is in the best interest of the public to approve the contemplated transfer of assets and customers.

3. We conclude that AFN should be allowed to notify the Commission as soon as it determines that it no longer needs its certificate for operational or billing purposes. However, before AFN requests to cancel its certificate and tariffs, it shall satisfy any remaining regulatory obligations for its South Carolina operations including, but not limited to, its 2010 gross receipts obligations and any assessments for the SC USF for the 2010 to 2011 fund year.

4. S.C. Code Ann. Section 58-3-230 governs the unauthorized change of a utility service provider. We conclude that the proposed customer notice and the plan for providing notice will satisfy S.C. Code Ann Section 58-3-230.

IT IS THEREFORE ORDERED

1. That the request for expedited review of the Joint Application is granted, and the requirement of a formal hearing is waived.

2. The Joint Application for authority to transfer the assets and customers of AFN to the Company is approved.

3. Specific to the facts of this Order and to the extent that the Commission has jurisdiction, we hold that the proposed customer notice will satisfy the South Carolina anti-slamming provisions.

4. After AFN notifies the Commission that operational and billing functions are complete, AFN's certificate and tariffs will be cancelled.

5. This order shall remain in full force and effect until further order of the Commission.

BY ORDER OF THE COMMISSION:

John E. Howard, Chairman

ATTEST:

David E. Wright, Vice-Chairman
(SEAL)

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NOS. 2010-325-C; 1999-323-C; 2000-265-C and 2001-21-C**

In re:

**Joint Application of Birch
Communications, Inc.; Birch
Telecom of the South, Inc., dba
Birch Communications; and
American Fiber Network, Inc. for
Approval to Transfer Assets**

CERTIFICATE OF SERVICE

This is to certify that I, Leslie Allen, a legal assistant with the law firm of Robinson, McFadden & Moore, P.C., have this day caused to be served upon the person(s) named below the **Proposed Order Approving Transfer of Assets and Customers** in the foregoing matter by placing a copy of same in the United States Mail, postage prepaid, in an envelope addressed as follows:

Shealy Riebold, Esquire
Office of Regulatory Staff
1401 Main Street, Suite 900
Columbia, South Carolina 29201

Dated at Columbia, South Carolina this 3rd day of November, 2010.



Leslie Allen